Aristotle and Natural Rights Revisited

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1. Introduction

Shortly after the appearance of Fred Miller's *Nature, Justice, and Rights in Aristotle's Politics*, David Keyt described it as "the finest book to appear on Aristotle's political philosophy since W. L. Newman published the final volume of his great four-volume commentary at the turn of the century."[1] Recently, over twenty-five years after its publication, Thornton Lockwood has described it as "perhaps the most influential monograph on the *Politics* in the last 50 years."[2] The book presents a comprehensive interpretation of Aristotle's *Politics* and situates Aristotle's thought in relation to modern political philosophy through the late-twentieth century. Supplemented by Miller's other work on these topics, it provides a framework for understanding the whole of Aristotle's political philosophy and for thinking about the prospects of various efforts to develop contemporary neo-Aristotelian theories.[3]

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[1] David Keyt, "Fred Miller on Aristotle's Political Naturalism," *Ancient Philosophy* 16, no. 2 (1996), p. 425.

[2] Thornton Lockwood, "The State of Research on Aristotle's *Politics*," in *Research Handbook on the History of Political Thought*, ed. Cary J. Nederman and Guillaume Bogiaris-Thibault (Cheltenham: Edward Elgar, forthcoming).

[3] Among a host of works, Fred D. Miller, Jr., *Nature, Justice, and Rights in Aristotle's Politics* (Oxford: Oxford University Press, 1995); Fred D. Miller, "Aristotle and the Origins of Natural Rights," *Review of Metaphysics* 49, no. 4 (1996), pp. 873–907; Fred D. Miller, "Naturalism," in *The Cambridge History of Greek and Roman Political Thought*, ed. Christopher Rowe and Malcolm Schofield (Cambridge: Cambridge University Press, 2000), pp. 321–65; Fred D. Miller, "Legal and Political Rights in Demosthenes and Aristotle,"

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While not every scholar of the *Politics* would share Keyt's high estimation of *Nature, Justice, and Rights in Aristotle's Politics*, its influence is easy to discern. Whether agreeing with it or developing rival interpretations, subsequent scholarship has been shaped by Miller's work, especially in two broad areas. The first concerns interpreting Aristotle's political naturalism, namely, his ideas that the *polis* exists by nature and that the norms governing political and ethical life are grounded in nature. The second concerns understanding Aristotle's theory of justice, especially the role it gives to the common good and its view of the relationship between individuals and communities. These two areas correspond to the first two terms in the title of Miller's *magnum opus*, where recent scholarship continues to engage explicitly with Miller and to show signs of his influence even when it does not.[4] Things are otherwise, however, with the third term in the book's title.

The initial years following the book's publication saw a flurry of responses, mostly critical, to its contentious claims about rights. Against a widespread consensus, Miller argues that, rightly understood and appropriately qualified, the concept of natural rights is central to Aristotle's political philosophy. Responses varied, but the most prominent objected that ascribing a concept of natural rights to

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Philosophical Inquiry 28, no. 1 (2006), pp. 27–60; Fred D. Miller, "Virtue and Rights in Aristotle's Best Regime," in *Values and Virtues: Aristotelianism in Contemporary Ethics*, ed. Timothy Chappell (Oxford: Oxford University Press, 2006); Fred D. Miller, "Did Plato and Aristotle Recognize Human Rights?" in *New Perspectives on Aristotelianism and Its Critics*, ed. Miira Tuominen, Sara Heinämaa, and Virpi Mäkinen (Leiden: Brill, 2014), pp. 93–110; and David Keyt and Fred D. Miller, "Aristotle on Freedom, Nature, and Law," in *State and Nature: Studies in Ancient and Medieval Philosophy*, ed. Peter Adamson and Christof Rapp (Leiden: Brill, 2021), pp. 119–34.

[4] For just a few examples, see the discussions of naturalism and the common good in Adriel Trott, *Aristotle on the Nature of Community* (New York: Cambridge University Press, 2014); David J. Riesbeck, *Aristotle on Political Community* (Cambridge: Cambridge University Press, 2016); George Duke, *Aristotle on Law: The Politics of Nomos* (Cambridge: Cambridge University Press, 2020); and Christof Rapp, "Whose State? Which Nature? How Aristotle's *Polis* is 'Natural'," in *State and Nature: Studies in Ancient and Medieval Philosophy*, pp. 81–118.

Aristotle is anachronistic at best, and at worst a wrongheaded effort to reclaim Aristotle from communitarian theorists in the service of a libertarian form of liberalism.[5] More recent scholarship is largely silent on the question and implicitly sides with Miller's critics in accepting the charge that interpreting Aristotle in terms of rights is unhelpfully anachronistic.[6] The question of natural rights in Aristotle thus seems to be a dead issue.

Yet I propose to resurrect this dead issue. Why? First, I think that Miller had the better of the dialectical exchange with his initial critics and that the common opinion to the contrary is mistaken. His response clarifies his own view and shows the weakness of most of the objections against it. Although I will endorse a version of one prominent objection, this objection does not undermine Miller's overall view and for the most part his arguments hold up when properly understood. Second, and more importantly, Miller's interpretation of Aristotle in terms of natural rights sheds light on both Aristotelian political philosophy and the concept of natural or moral rights. Here, however, I draw a somewhat different lesson from Miller's interpretation than Miller does.

Miller argues that natural rights are central to Aristotle's thought and that Aristotle provides a basis for a theory of rights superior to most modern liberal theories. I will argue that Miller's

[5] Some representative early critiques were John Cooper, "Justice and Rights in Aristotle's *Politics*," *Review of Metaphysics* 49, no. 4 (1996), pp. 859–72; Richard Kraut, "Are There Natural Rights in Aristotle?" *Review of Metaphysics* 49, no. 4 (1996), pp. 755–74; Malcolm Schofield, "Sharing in the Constitution," *Review of Metaphysics* 49, no. 4 (1996), pp. 831–58; Randall Curren, "Review of *Nature, Justice, and Rights in Aristotle's Politics*," *Reason Papers* 22 (1997), pp. 144–53; Paul Schollmeier, "Review of F. D. Miller, *Nature, Justice, and Rights in Aristotle's Politics* and R. Heinaman, ed., *Aristotle and Moral Realism*," *Social Theory and Practice* 24, no. 1 (1998), pp. 133–51; Daniel C. Russell, "Aristotle on Rights and Justice," *Polis* 16, nos. 1–2 (1999), pp. 73–85; and Vivienne Brown, "'Rights' in Aristotle's *Politics* and *Nicomachean Ethics*?" *Review of Metaphysics* 55, no. 2 (2001), pp. 269–95.

[6] To illustrate, there is no discussion of rights or natural rights in the essays collected in Thornton Lockwood and Thanassis Samaras (eds.), *Aristotle's Politics: A Critical Guide* (Cambridge: Cambridge University Press, 2015).

interpretation helps us to see that an Aristotelian theory of justice can do all the work that we would reasonably want a theory of rights to do while avoiding significant problems that the idiom and rhetoric of rights tend to generate. Where Miller holds it reasonable to ascribe a concept of rights to Aristotle, I will maintain that what his interpretation shows instead is that Aristotle has a different way of talking about much of what we often try to talk about in the language of rights. Miller successfully shows that Aristotle's theory of justice *can* aptly be expressed in the language of rights. However, I will argue that an Aristotelian theory of justice can dispense with that language altogether and that its value as an account of rights lies in part in showing that we do not strictly need the language of rights. An Aristotelian can thereby avoid concluding that natural rights are "nonsense on stilts" or "liberal fictions" without embracing the problematic commitments that have given rise to powerful critiques of rights language and rights theories.[7]

I begin in Section 2 with an overview of Miller's interpretation of Aristotle in terms of natural rights. In Section 3, I provide a brief survey of some major objections to Miller's thesis and a defense against them. I then turn in Section 4 to problems with natural rights raised by some prominent recent critics before showing in Section 5 how Miller's interpretation of Aristotle helps us see the potential for a fruitful way of understanding rights language.

2. Miller on Aristotle and Natural Rights

Miller's most contentious claim is that the concept of natural rights is central to Aristotle's political philosophy. Before we can assess this claim, we need to understand what Miller means by "natural rights." How does he understand rights and what is involved in rights being natural? Miller's account of the concept of a right is taken from Wesley N. Hohfeld's influential analysis of rights language in law.[8]

[7] Bentham famously called natural rights "nonsense on stilts"; see Jeremy Bentham, "Anarchical Fallacies," in *The Works of Jeremy Bentham*, vol. 2, ed. John Bowring (Edinburgh: Willam Tait, 1843), pp. 489–534. "Liberal fictions" is Alasdair MacIntyre's description of human rights in Alasdair MacIntyre, *Ethics in the Conflicts of Modernity* (Cambridge: Cambridge University Press, 2016), p. 77.

[8] Wesley N. Hohfeld, *Fundamental Legal Conceptions* (New Haven, CT: Yale

Hohfeld holds that rights language is systematically ambiguous, but that talk of rights can be analyzed or reduced to some combination of four types of relation, each with its corresponding sense of "a right":

1. X has a *claim-right* to Y's φ-ing if and only if Y has a duty to X to φ.
2. X has a *liberty-right* to φ relative to Y if and only if it is not the case that X has a duty to Y not to φ.
3. X has a *power-right* to φ relative to Y if and only if Y has a liability to a change in Y's legal position through X's φ-ing.
4. X has an *immunity-right* relative to Y's φ-ing if and only if Y does not have a power right to φ with respect to X.

Miller accepts Hohfeld's analysis with some qualifications.[9] First, he argues that Hohfeld succeeds only in providing necessary, not sufficient, conditions for rights. To have a claim-right, Miller argues, it is not sufficient that someone else have a duty to do something that benefits me. I must also be justified in making a claim against the person to the performance of the duty. The duty correlative to a right must be a duty *to* the right-holder, and so Hohfeld's analysis should be reformulated to state only a necessary and not a sufficient condition for holding a right. Second, Miller argues that Hohfeld's analysis of liberties is too weak, since it does not entail that any others have a duty of non-interference. Liberties are often thought of as entailing such duties, and so we should either modify the definition to reflect this fact or distinguish between protected and unprotected liberties in terms of whether the liberty entails duties of non-interference. With these qualifications, however, Miller holds that common talk of rights can be analyzed in terms of the relations distinguished in Hohfeld's analysis.

Two features of Miller's Hohfeldian conception of rights are especially important for our purposes. First, it neither says nor implies anything about the basis of rights. So far as this analysis is concerned, rights may be prior to duties, such that they generate duties or explain why others have them. Rights may be morally fundamental as self-evident first principles constraining our pursuit of self-interest. Yet so

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University Press, 1919).

[9] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 94–96.

far as the analysis of the concept is concerned, none of this need be so. Duties may be prior to rights, and rights may be far from morally or rationally fundamental; they may admit of any variety of rational justification. The concept of a right is the concept of a certain kind of normative relationship between persons, with different sorts of rights combining the different elements of the qualified Hohfeldian analysis in different ways.

Second, although Miller does not emphasize it, the same is true of the notion of duties at work in this analysis. The relevant duties may be morally fundamental, categorical, absolute, exceptionless, and inescapable or they may be derivative, hypothetical, context-dependent, liable to exception, and escapable. The concepts of a right and of the duty or obligation correlative to it leave these matters indeterminate. Different conceptions or theories of rights may be committed to some more determinate claims about what kinds of rights and duties people have under what conditions and why, but on this analysis, such claims are not essential to the concept of a right. "A right," Miller says, "is a claim of justice which a member of a community has against the other members of the community. A theory of justice supports individual rights if it entails that each and every individual within the community has moral standing and a claim to protection."[10] It is in this sense that Miller argues that rights are central to Aristotle's political philosophy.

What, though, does Miller mean when speaking of "natural" rights? He distinguishes two senses of the expression. Rights might be natural in the sense that people possess them already in a state of nature, that is, a state conceived as lacking any political community and perhaps even any settled social relationships altogether. Rights are natural in this sense if their bearers have them "solely on account of their natures as individuals and apart from any social or political considerations."[11] Nature is here understood as contrasting with society, or at least with political community.

[10] Miller, "Aristotle and the Origins of Natural Rights," p. 875; cf. Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 17.

[11] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 90.

In a second sense, however, rights might be natural if they are "based on natural justice."[12] Here nature is contrasted with convention, not with sociality or politics. The key idea is that norms of justice require respect for rights independently of whether those rights receive recognition or respect from the conventions or laws of any given community. Rights possessed in a state of nature are also based on natural justice, but rights based on natural justice need not be possessed in a state of nature. Rights might depend on social relations without being mere artifacts of law or convention. Miller holds that Aristotle recognizes rights based on natural justice despite not recognizing rights possessed in a state of nature.

Miller's thesis about rights in Aristotle, then, has two parts: Aristotle recognizes rights and he regards at least some of them as based on natural justice. To support the first claim, Miller argues that Aristotle consistently employs certain terms in ways that correspond to each of the four elements in the Hohfeldian analysis of rights. *Dikaion* is used to express claim-rights, *exousia* and related terms denote liberties, the adjectives *kurios* and *akuros* assert or deny powers, and the noun *adeia* names an immunity.[13]

Miller supports the second claim through an interpretation of Aristotle's political naturalism and his account of the common good. Aristotle holds that the polis exists by nature and that human beings are by nature political animals. As Miller interprets these claims, human beings need to live together in political communities in order to develop and exercise our essential capacities fully, and we tend to form such communities in pursuit of those ends.[14] The function or purpose of a political community is to enable its members to flourish, and the virtue of justice is paradigmatically concerned with cooperation aimed at achieving this goal. When justice is concerned with forms of community other than the political, it is to be understood by reference to justice in political community; in each case, it is a matter of

[12] Ibid., p. 88.

[13] Ibid., pp. 97–106. He finds examples of this language in Demosthenes; see also Miller, "Legal and Political Rights."

[14] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 27–60.

respecting and promoting common goods.[15] Doing so successfully requires recognizing certain claims, liberties, powers, and immunities. In this way, the norms of justice involve rights. Since the goods constitutive of human flourishing and the requirements for successfully pursuing it in common are fundamentally determined by human nature rather than convention, these norms are natural in the relevant sense. The dependence of human flourishing on political community—and on community relationships more generally—means that these norms do not obtain independently of all political and social relations. Consequently, the rights entailed by Aristotle's theory of justice would not be possessed in a state of nature. Yet they are based on natural justice, which is a set of norms that transcends convention or positive law and provides a standard for assessing them.

3. Criticisms of Miller on Aristotle and Natural Rights

Early responses to Miller's view of Aristotle and natural rights were mostly critical and many objections took a similar form. They held that it is anachronistic or simply mistaken to attribute a concept of natural rights to Aristotle because his theory lacks some feature essential to a concept of rights, such as being based on respect for subjective freedom,[16] holding a foundational role in explaining requirements of justice,[17] contrasting with merit or desert,[18] being circumstantially stable enough,[19] protecting individuals from the demands of the common good,[20] being independent of their value to others besides the right-bearer,[21] or being a moral power that

[15] Ibid., pp. 67–86.

[16] Cooper, "Justice and Rights in Aristotle's *Politics*," pp. 862–66.

[17] Schofield, "Sharing in the Constitution," p. 852; Russell, "Aristotle on Rights," p. 77.

[18] Kraut, "Are There Natural Rights in Aristotle?" pp. 760–62; Schofield, "Sharing in the Constitution," p. 856.

[19] Kraut, "Are There Natural Rights in Aristotle?" pp. 762–64.

[20] Ibid., p. 763.

[21] Ibid., pp. 767–69.

individuals have to make claims on others (or even being something that individuals have at all).[22] The problem with all of these objections is that they insist on treating some feature or other as essential to the concept of rights, when the usage of that concept does not in fact always display that feature.

A look at contemporary rights theory shows that rights are not uniformly regarded as grounded in respect for freedom in contrast to well-being, as logically prior to duties and explanatory of them, etc.[23] To be sure, such features are prominent in some controversial conceptions or theories of rights, but none can plausibly claim to be essential to the concept of a right. No view about the basis or rational justification of rights, their scope or their character as absolute or conditional, or about their relation to other concepts such as well-being, can be taken as essential to the concept. Even the concept of a specifically natural or moral right simply excludes purely conventional or legal bases or justifications, but otherwise leaves the issue of rational justification indeterminate. The core of a concept of a right is given by the qualified Hohfeldian analysis, and the concept of a natural right is the concept of a right not based on convention or law. Such, at least, is Miller's view.

On this account, the concept of a natural right is thin, excluding much that characterizes various rival conceptions or theories of rights. This aspect of Miller's view helps to explain an otherwise puzzling feature of some of the responses to it. Several critics combined objections of the foregoing sort with the complaint that Miller's thesis is trivial because rights simply follow from any account of justice. Malcolm Schofield, for instance, rejects Miller's

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[22] Schofield, "Sharing in the Constitution," pp. 843–45; Curren, "Review of *Nature, Justice, and Rights in Aristotle's Politics*," p. 149; Brown, "'Rights' in Aristotle's *Politics* and *Nicomachean Ethics*?" pp. 281–82.

[23] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 115–17, already makes this observation, but it should also be clear from Michael J. Perry, *The Idea of Human Rights: Four Inquiries* (Oxford: Oxford University Press, 1998) and Leif Wenar, "Rights," in *The Stanford Encyclopedia of Philosophy* (Spring 2021 Edition), ed. Edward N. Zalta, accessed online at https://plato.stanford.edu/entries/rights/, to take but two examples.

interpretation on the grounds that a theory of rights cannot be based on merit or desert and must give rights themselves a fundamental explanatory role.[24] Yet Schofield also holds that "from an account of *objective right* one can simply derive a corresponding account of *subjective right*."[25] There is an apparent tension, at best, between rejecting Miller's thesis as mistaken and allowing that it follows as a trivial logical consequence from what Aristotle says. In fact, however, these two pieces of Schofield's critique fit together perfectly: Miller is right to think that what he calls natural rights follow from Aristotle's theory of justice, for they do so trivially, but what Miller calls rights are not substantive enough to warrant attributing to Aristotle a "rights-based theory."[26]

We might think that this conclusion is tantamount to a concession of defeat on Schofield's part, since Miller does not purport to interpret Aristotle as holding a rights-based theory of justice, but a theory that recognizes rights based on justice. For Schofield to allow that Aristotle's theory of natural justice entails respect for Hohfeldian rights is to accept Miller's thesis rather than to challenge it. The deeper problem, however, is that if every theory of justice trivially entails the recognition of Hohfeldian rights, and the concept of rights does no other work in Aristotle's theory, then Aristotle as Miller interprets him will turn out to have a theory of natural rights only in the same way that every philosopher who rejects conventionalism has a theory of natural rights.[27] If every account of justice can be translated into the language of rights, we learn nothing significant about the theory from so translating it.

Yet, crucially, Miller does not hold that Aristotle recognizes natural rights only in the trivial sense that his theory of justice can be

[24] Schofield, "Sharing in the Constitution," pp. 852–53. There are echoes of this view in Curren, "Review of *Nature, Justice, and Rights in Aristotle's Politics*," Russell, "Aristotle on Rights and Justice," and Kraut, "Are There Natural Rights in Aristotle?"

[25] Schofield, "Sharing in the Constitution," p. 844.

[26] Ibid., p. 856. So too Russell, "Aristotle on Rights and Justice," p. 73.

[27] Russell, "Aristotle on Rights and Justice," p. 77.

expressed in terms of Hohfeldian rights. Miller's account of the concept of a natural right is thin, but it is not that thin. For Miller, "what is distinctive about a theory of rights as such is that it prohibits as unjust the sacrifice of individuals and their ends in order to advance the interests of other individuals or groups of individuals."[28] Act utilitarianism and some other forms of consequentialism do not fit this description, since they prescribe acts and policies that promise to produce the best overall outcomes, even when producing those outcomes involves killing or otherwise harming individuals. Yet we could describe the requirements of an act-utilitarian account of justice in terms of Hohfeldian rights. The difference is not that Hohfeldian rights justified by a consequentialist calculus might be highly unstable or frequently liable to exception, for the same is true of some rights on Aristotle's theory as Miller interprets it. Many rights theories also recognize significant limitations or conditions for at least some rights.[29] The difference is that a theory that recognizes rights does not countenance the complete subordination or instrumentalization of individuals to some greater good.[30] Consequentialism, in some of its

[28] Miller, "Aristotle and the Origins of Natural Rights," p. 876.

[29] Perry, *The Idea of Human Rights*, pp. 48–54 and 85–106; Wenar, "Rights."

[30] Miller says that they do not permit "sacrifice" of individuals and their ends, but whether this formulation is acceptable depends on how we understand sacrifice. If any choice that we can reasonably foresee will result in the loss of something counts as a sacrifice of that thing, then it is implausible to hold that Aristotle's or any other sensible view of justice prohibits the sacrifice of individuals and their ends, because some choices that foreseeably result in loss of life or severe deprivation of well-being may sometimes be inevitable; Miller, "Aristotle and the Origins of Natural Rights," pp. 893–95, responding to Kraut, "Are There Natural Rights in Aristotle?" pp. 769–72, implicitly accepts this point. If sacrifice is understood more narrowly, however, as the intentional harm or destruction of something as a means to an end, then it will be acceptable to say that a rights theory prohibits at least certain sorts of sacrifice of individuals and their ends. This narrower understanding of sacrifice arguably depends on a distinction between intended and merely foreseen consequences and a distinction between acts and omissions, neither of which Aristotle articulates. This issue is beyond the scope of this article, but see Michael Pakaluk, "Mixed Actions and Double Effect," in *Moral Psychology and Human Action in Aristotle*, ed. Michael Pakaluk and Giles Pearson (Oxford: Oxford University Press, 2011), pp. 211–32.

forms, values individual well-being only for its contribution to overall well-being or gives overall well-being strict priority over individual well-being, and thereby completely subordinates or instrumentalizes individuals and their well-being to overall well-being. Miller's conception of a theory of rights is therefore hardly trivial, since it excludes a whole family of moral theories.

Miller's ascription of a theory of rights in this sense to Aristotle is far from trivial in a second way. It might seem that Aristotle subordinates individuals to the common good of the *polis* and therefore cannot hold such a theory. After all, justice for Aristotle is fundamentally concerned with the common good, the polis is prior by nature to individuals, and "we should not think that any of the citizens belongs to himself, but that all belong to the city, for each is a part of the city" (*Pol.*, VIII.1, 1337a27-29). One of the achievements of *Nature, Justice, and Rights in Aristotle's Politics*, however, is to show how Aristotle's conceptions of the priority of the polis and of the common good are compatible with a theory of justice committed to respecting and promoting the flourishing of each individual member of the political community.

The key to this compatibility lies in what Miller calls the "moderate individualist" interpretation of the common good (or, as Miller prefers to translate it, the common advantage). This interpretation is individualistic in that it is opposed to holistic interpretations on which the common good is a collective good over and above the good of individuals. Whether in its extreme or moderate forms, holism does not regard the common good as good for each individual. Its extreme version sees individuals as existing for the sake of the whole and so as mere means to the common good, but even its moderate version sees the common good as a good of the community as a whole that may not benefit each of its members. Individualist interpretations, by contrast, see the common good as benefiting each member of the community as an individual. The common good of a group of people is mutually beneficial for each rather than a merely aggregate good or something overall good for the majority. A moderate individualist interpretation, however, sees the good of individuals as itself including intrinsically other-regarding activities, in contrast to "extreme individualist" views on which the common good must

contribute to each individual's purely self-confined and self-regarding interests. Friendship, virtue, and participation in the shared life of the community are themselves partially constitutive of an individual human being's flourishing. On a moderate individualist interpretation, then, the common good is irreducibly social, yet it is common and good because it benefits each individual who participates in the community as well as being a shared aim of their co-operative action.[31]

On a moderate individualist interpretation of the common good, individuals are not wholly subordinated or instrumentalized to the common good, even as it includes more than their own good and extends its benefits beyond the good it does for any given individual. Precisely because the common good of the polis makes an indispensable contribution to each individual's good, individuals do not sacrifice their own overall good by contributing to it. By the same token, respecting and promoting the common good does not conflict with respecting and promoting the good of other individuals. The political common good is what it is because it enables each of the members of the community to pursue their flourishing in common with others. The respect for rights that is part of successful cooperation with a view to living well is therefore included in the common good rather than in competition with it.

Miller's most prominent critics largely do not target this moderate individualist interpretation of the political common good, and they even independently embrace something similar to it.[32] By Miller's lights, however, accepting moderate individualism about the common advantage alongside a naturalistic account of human flourishing and

[31] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 198–205.

[32] With Cooper, "Justice and Rights in Aristotle's *Politics*" and Kraut, "Are There Natural Rights in Aristotle?"; cf. John Cooper, "Political Animals and Civic Friendship," in *Reason and Emotion*, John Cooper (Princeton, NJ: Princeton University Press), pp. 356–77; Richard Kraut, *Aristotle: Political Philosophy* (Oxford: Oxford University Press, 2002); and esp. Richard Kraut, "Aristotle and Rawls on the Common Good," in *The Cambridge Companion to Aristotle's Politics*, ed. Marguerite Deslauriers and Pierre Destrée (Cambridge: Cambridge University Press, 2013), pp. 350–74. Schofield, "Sharing in the Constitution," pp. 857–58, agrees with the centrality of individualism in Aristotle's thought. So too Curren, "Review of *Nature, Justice, and Rights in Aristotle's Politics*," p. 148.

the requirements for achieving it is tantamount to accepting a theory of natural rights. Once we appreciate how Miller conceives of rights, we can see that most of the critics' objections beg the question in favor of one or another narrower conception of rights, none of which has a plausible claim to capturing the essential features of the concept. On the whole, then, I think that Miller's ascription of a concept of natural rights to Aristotle escapes the major criticisms leveled at it.

For all that, there is yet one sense in which it would be reasonable to deny that Aristotle has a concept of rights. Miller argues that Aristotle has a concept of rights by pointing to terms and expressions in Aristotle's Greek that are regularly used to assert or deny Hohfeldian rights. As Miller notes, however, most ordinary and legal language about rights does not pick out the elements of Hohfeld's analysis as such. Rather, talk of "a right" typically refers to a complex whole of which individual Hohfeldian rights are aspects.[33] We might doubt that possession of concepts for the various aspects taken in isolation is sufficient for possessing a concept of the whole. In any case, we have good reason to doubt that Aristotle works with precisely the same concepts even for the various aspects. Miller makes a strong case for understanding *exousia* as a Hohfeldian liberty, *kurios* and *akuros* as asserting and denying Hohfeldian powers, and *adeia* as naming a Hohfeldian immunity. His case for regarding *dikaion* as equivalent to a Hohfeldian claim-right, however, is not entirely convincing. Miller easily shows that the possession of a Hohfeldian claim-right is often logically entailed by claims about what is *dikaion* or just.[34] But Cooper seems correct to insist that it often expresses more than that.[35] The term most basically describes something or someone as just or right. Although it at times describes that to which someone has a rightful claim, it can also refer to a duty rather than to

[33] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 96.

[34] Ibid., pp. 97–101.

[35] Cooper, "Justice and Rights in Aristotle's *Politics*," pp. 866–68. Cooper's objections do not adequately recognize that Miller's concept of a right implies a duty, but he nonetheless seems to show that *dikaion* and 'a right' simply have different meanings even in those contexts in which *dikaion*'s emphasis is on the right rather than the duty.

its correlative claim-right, as Miller himself points out.[36] If *dikaion* and a Hohfeldian claim-right are identical concepts, they should be co-extensive in reference and have the same intension, but it seems that neither is true. Rather, as many have maintained, *dikaion* is a term for "objective right" in the sense of what is right, not a term for a "subjective right," that is, a right that someone has.[37]

Miller partially concedes this objection, maintaining only that Hohfeldian claim-rights are a significant part of what *dikaion* expressions assert.[38] This concession seems more serious than Miller acknowledges, though, since it allows for a significant sense in which we can deny that Aristotle had the concept of a right. The possession of a claim-right is often entailed by assertions of what is just or right, but the language of *to dikaion* is not the language of rights. Yet we should not overstate the force of this objection. Miller claims that his "main concern in *Nature, Justice, and Rights in Aristotle's Politics* was to refute the claim that Aristotle was oblivious to rights."[39] We should agree insofar as what he means is that Aristotle has a language for talking about what many of us try to talk about in the language of rights, and that he regards what we try to talk about in the language of rights as central to his theory of justice. The concepts are not identical, but there is significant overlap that allows us to see Aristotle and modern rights theories as offering competing accounts of the same subject matter, namely, what is owed to whom and why.

4. Some Problems with Natural Rights

This might seem a rather tepid defense of Miller. After all, even his critics have often agreed that he showed how Aristotle's thought can be expressed in the language of rights; they simply held that it is not helpful or illuminating to do so.[40] One reason for avoiding

[36] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, p. 101.

[37] Ibid., p. 92; Schofield, "Sharing in the Constitution," pp. 844–45; Michael Pakaluk, "Aristotle on Human Rights," *Ave Maria Law Review* 102, no. 2 (2012), p. 379.

[38] Miller, "Aristotle and the Origins of Natural Rights," p. 883.

[39] Ibid.

[40] Cooper, "Justice and Rights in Aristotle's *Politics*," pp. 861–62 and 866;

Miller's approach, emphasized by Schofield, has to do with the proper goal of historical scholarship: We should emphasize what is distinctive about the thought of the past rather than flattening out or even distorting differences by "retranslating" that thought into our own idiom.[41] Miller's model of "philosophical scholarship," by contrast, seeks to go beyond understanding texts in their own terms by putting the thought of the past into dialogue with later and contemporary philosophy.[42] Although Miller distinguishes this approach to studying Aristotle from neo-Aristotelian theorizing, it is also plainly part of his goal to help make Aristotle's thought more available for such theorizing. Neither this goal nor his general methodology leads Miller to deny or downplay significant differences between Aristotle and modern thought. On the contrary, part of Aristotle's relevance to contemporary philosophy, as Miller sees it, lies in the significant differences between an Aristotelian approach to rights and modern liberal approaches.[43] We might say on Miller's behalf, then, that part of why it is useful and illuminating to formulate Aristotle's theory in terms of rights is that it helps us to compare *and contrast* Aristotle with modern and contemporary thinkers. It also helps us to explore the possibility that Aristotle's thinking about justice might provide a promising approach to rights theory.

Yet even with these goals in mind, it might seem more helpful and illuminating to keep Aristotle's thinking and modern rights language apart. When we consider the way that rights talk tends to figure in contemporary discourse, whether popular or academic, it can seem preferable to find another idiom altogether. Rather than the

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Kraut, "Are There Natural Rights in Aristotle?" pp. 755–57; Schofield, "Sharing in the Constitution," p. 856, echoed by Pakaluk, "Aristotle on Human Rights."

[41] Schofield, "Sharing in the Constitution," pp. 856–57.

[42] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 21–22, drawing on David Charles, *Aristotle's Philosophy of Action* (Ithaca, NY: Cornell University Press, 1984), pp. ix–x.

[43] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 117–28 and 373–77, and Miller, "Aristotle and the Origins of Natural Rights," pp. 879–80, should make this clear.

clarity and orderliness of the Hohfeldian analysis, we often encounter appeals to rights as though they were first principles of morality that make absolute, unconditional demands on all rational persons. Where the articulation of a Hohfeldian right invites the question of why the right obtains—that is, why someone has a right and someone else has a duty—rights language often supposes that the assertion of a right itself gives a fundamental reason for the duty, with no need for any further explanation. Such language also often lacks a clear indication of whose duty it is: some course of action should be taken (by someone or other) *because* these people have a right to it. In part for this reason, rights discourse is often contentious and without much apparent prospect for rational resolution of disagreements, obstructing constructive dialogue and clear thought.

It can be tempting to concur with Mary Ann Glendon's much-quoted summary of the trouble with "rights talk":

> Our rights talk, in its absoluteness, promotes unrealistic expectations, heightens social conflict, and inhibits dialogue that might lead towards consensus, accommodation, or at least the discovery of common ground. In its silence concerning responsibilities, it seems to condone acceptance of the benefits of living in a democratic social welfare state, without accepting the corresponding personal and civic obligations. In its relentless individualism, it fosters a climate that is inhospitable to society's losers, and that systematically disadvantages caretakers and dependents, young and old. In its neglect of civil society, it undermines the principal seedbeds of civic and personal virtue. In its insularity, it shuts out potentially important aids to the process of self-correcting learning. All these traits promote mere assertion over reason-giving.[44]

We might think that these problems arise from incidental cultural factors rather than from the logic of rights as such, but at least some seem to be baked into the idioms of natural or moral rights. Nigel

[44] Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: The Free Press, 1991), p. 14.

Biggar's recent *What's Wrong with Rights?* mounts an impressive case against the idea of natural rights, one more philosophically nuanced and historically responsible than those of many prominent critics of rights. After an account of the historical development of rights language and a tradition of skepticism about natural rights, Biggar identifies several problems with the idea of natural rights that ultimately lead him to conclude that while there is such a thing as a natural law or natural morality, and this natural morality justifies certain positive legal rights, "there are no natural rights."[45]

Biggar maintains that the idea of *a* right, in contrast to the idea of what is right, begins as a concept in positive law, where rights have a considerable degree of stability and security that cannot obtain in the absence of a legal system. This difference might be acknowledged in talk of natural rights, but in practice it has been obscured, so that natural rights are assumed to have the same kind of circumstantial invariability as legal rights.[46] In part for this reason, natural rights talk has tended to exaggerate the unconditional character of purported rights.[47] Proponents of natural rights have also often confused historically or culturally contingent ways of satisfying an abstract natural right with the right itself, as with alleged human rights to democratic citizenship, to bear arms, or to freedom from child labor.[48] Natural rights have often been claimed even when duties cannot be ascribed to anyone or it is impossible to fulfill them, rendering the purported rights more like an ideal or aspiration than anyone's duty.[49] So too, natural rights theorists have tended to turn their attention away from the duties of rights-holders themselves and the ways that these duties must condition and limit their rights. Also, because the language of rights has conclusory force, implying a definite verdict about what is

[45] Nigel Biggar, *What's Wrong with Rights?* (Oxford: Oxford University Press, 2020), p. 131.

[46] Ibid., p. 123.

[47] Ibid., p. 124.

[48] Ibid., p. 124; cf. pp. 102–3.

[49] Ibid., p. 124.

to be done or not done, it often functions rhetorically to trump deliberation or debate, to stifle inquiry into why and whether something should be done or not done, and ultimately to obscure the dependence of claims of right on other principles and considerations.[50]

Some may insist that the idea of natural or moral or human rights can be rescued from the difficulties Biggar raises, so that we cannot conclude that there are no such things. Yet when even influential proponents of human rights theories acknowledge severe problems with rights discourse, it can be tempting to dispense with such language altogether in favor of another that does not so readily succumb to the vices Biggar catalogues.[51] This temptation will probably seem especially strong to those of us with Aristotelian sympathies, precisely because Aristotle and much of the later Aristotelian tradition was able to get along without the language of rights. Rather than follow Miller in "retranslating" Aristotle's theory of justice into the language of rights, we might opt to follow Alasdair MacIntyre, who has long rejected the idiom of natural rights and resisted efforts to formulate an Aristotelian account of justice in such terms.[52] MacIntyre shares many of Biggar's objections to natural rights

[50] Ibid., pp. 124–25.

[51] Ibid., pp. 93–105 and 109–20, surveys some prominent recent theories of human rights, each of which acknowledges significant problems with contemporary rights discourse.

[52] MacIntyre's critique of natural rights is long-standing and has been developed over a number of writings, only some of the most important of which are Alasdair MacIntyre, *After Virtue* (Notre Dame, IN: University of Notre Dame Press, 1981); Alasdair MacIntyre, "Are There Any Natural Rights?" Charles F. Adams Lecture, Bowdoin College (1983); Alasdair MacIntyre, "Community, Law, and the Idiom and Rhetoric of Rights," *Listening: Journal of Religion and Culture* 26 (1991), pp. 96–110; and Alasdair MacIntyre, "What More Needs to Be Said? A Beginning, Although Only a Beginning, at Saying it," *Analyse & Kritik* 30 (2008), pp. 261–76. Considerable controversy has arisen over the interpretation of MacIntyre's critique; my understanding follows Mark C. Murphy, "MacIntyre's Political Philosophy," in *Alasdair MacIntyre: Contemporary Philosophy in Focus*, ed. Mark C. Murphy (Cambridge: Cambridge University Press, 2003), pp. 152–75; and Mark Retter, "The Road Not Taken: On MacIntyre's Human Rights Skepticism," *American Journal of Jurisprudence* 62, no. 2 (2018), pp. 189–219.

discourse, but bases much of his critique on a more fundamental problem that Mark Retter, following Joseph Raz, calls "the individualist fallacy."[53]

This fallacy arises when "the potential value of the right for the individual holder is presumed to ground an adequate reason to impose duties on others, without due consideration of the social commitments, constitutive of natural justice and necessary to make that value a matter for common concern."[54] Insofar as proponents of natural or moral rights give reasons to support their rights assertions, they often point to the role of rights in providing people with what they need, want, or will. However, as Retter puts it, paraphrasing MacIntyre, "the fact that I *need, want,* or *will* something . . . is not reason in itself for me having a *right* to it."[55] If I have a right, others have a duty to do or refrain from doing something to or for me. That duty cannot be explained simply by my interests or my will. Rather, it must depend on how my interests or will fit into a broader communal context that includes the interests and will of those others who have a duty to me (and perhaps others). As MacIntyre sees it, the language of rights functions to conceal their dependence on these other considerations and to obstruct genuine deliberation and inquiry into how we should live together. We can carry on that deliberation and inquiry effectively without the language of natural or moral rights. Hence, we have ample reason to do so, and Aristotle and Aristotelian philosophy's value as a resource for us lies in part in the fact that it does so. Retter argues that MacIntyre acknowledges the possibility of formulating a theory of rights with Aristotelian Thomistic foundations. However, he refuses to do so on the grounds that the language of rights is embedded in the social practices of liberal modernity in such a way as to entangle it inextricably with the features that the Aristotelian approach would seek to challenge.[56]

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[53] Retter, "The Road Not Taken"; Joseph Raz, "Rights and Politics," *Indiana Law Journal* 71, no. 1 (1995), pp. 27–44.

[54] Retter, "The Road Not Taken," p. 198.

[55] Ibid.

[56] Ibid., pp. 215–19.

If popular and academic discourse about natural or moral rights is as problematic as Biggar and MacIntyre think, the value of Miller's retranslation of Aristotle in the language of rights seems dubious. It is not that Miller's interpretation is anachronistic, that it is the product of an inappropriate methodology, or that it is mistaken to hold that, properly understood and duly qualified, we can attribute a concept of natural rights to Aristotle. Rather, his retranslation assimilates Aristotle's theory to a problematic mode of thought and discourse to which it is better suited to provide a fruitful alternative. Or so those with Aristotelian philosophical sympathies might think. I want to argue that even those of us who share these sympathies should not embrace quite this conclusion.

5. Aristotelianism and Rights Language

The language of rights has become virtually unavoidable in two different but related areas of modern Western discourse: law and morality. A legal system that did not recognize or assign rights would be difficult to understand as a legal system, but neither the concept of legal rights nor the indispensable use of rights language in law generates the sorts of problems that trouble critics such as Biggar and MacIntyre. Rather, it is the language of natural, moral, or human rights that poses these problems. There are, however, at least two difficulties with any Aristotelian proposal to expunge the concept and language of rights from moral discourse altogether.

The first is that, for better or worse, the language of rights "is the principal language in which . . . claims about what ought not to be done to any human being and claims about what ought to be done for every human being have come to be expressed."[57] To refuse to speak in that language is to risk suggesting that there *is* nothing that ought not to be done to any human being or that ought to be done for every human being. This is not to say that rights must be conceived as absolute, unlimited, and unconditional or that any absolute, unlimited, and unconditional obligations can only be understood in terms of rights. Rather, the denial of natural or human rights suggests that what we owe to each other is in all cases contingent on circumstances or

[57] Perry, *The Idea of Human Rights*, p. 6.

expediency, such that it can easily turn out to be justified to sacrifice individual human beings' needs or even their lives as means to some overriding good. Some forms of consequentialism embrace this sort of conclusion, leading them to reject the concept of rights as anything other than a convenient rhetorical tool.[58]

Some neo-Aristotelians might embrace a similar view, but Aristotle himself is not plausibly interpreted in that way. He clearly endorses some exceptionless norms and, as Miller's moderate individualist interpretation has it, refuses to subordinate or instrumentalize individuals in the way that such theories allow.[59] Nor does he limit this kind of respect for individuals to fellow members of one's own political community. Although he infamously does not embrace a *human* right not to be enslaved, he maintains that all "naturally free" human beings—those with the fundamental capacity to live as free people—cannot be justly enslaved by anyone regardless of their prior relations. The idea of not treating such people as though they were slaves is central to his whole way of thinking about justice.[60] Aristotle did not need the language of rights to express this view, and neo-Aristotelians could express it without rights language. To refuse on principle to do so, however, is a bit like refusing to translate your

[58] See, e.g., Peter Singer, *Practical Ethics* (Cambridge: Cambridge University Press, 1993), p. 96.

[59] On exceptionless norms in Aristotle, see Victor Saenz, "Adultery, Theft, and Murder: Aristotelian Practical Rationality and Absolute Prohibitions," *Ancient Philosophy Today* (forthcoming); for earlier interpretations, see Christopher Kaczor, "Exceptionless Norms in Aristotle? Thomas Aquinas and Twentieth-Century Interpreters of the *Nicomachean Ethics*," *Thomist* 61 (1997), pp. 33–62.

[60] Miller, *Nature, Justice, and Rights in Aristotle's Politics*, pp. 84–86, strengthened in Miller, "Aristotle and the Origins of Natural Rights," pp. 891-92, in response to Kraut, "Are There Natural Rights in Aristotle?" and Roderick Long, "Aristotle's Conception of Freedom," *Review of Metaphysics* 49, no. 4 (1996), pp. 775–802. On these points, see further David J. Riesbeck, "Aristotle and the Scope of Justice," *Journal of Ancient Philosophy* 10, no. 1 (2016), pp. 59–91, and Keyt and Miller, "Aristotle on Freedom, Nature, and Law."

speech for someone who does not speak your language. Why erect obstacles to mutual understanding?

A second difficulty for Aristotelian refusals to employ rights language in moral contexts is that Aristotelians think there is or ought to be a close connection between justice and law, and contemporary law inescapably employs the language of rights. Aristotelians will argue, in particular, that as a matter of justice the common good requires the effective legal recognition and protection of certain legal rights. That is, positive law should recognize and protect certain bundles of Hohfeldian claim-rights, liberties, powers, and immunities, and should not recognize and protect other possible bundles.[61] They need not express this thought in terms of calling for the institution of legal rights corresponding to already existing moral rights. However, their account of why this or that right should be recognized in law will depend in part on appeal to obligations that people have independently of positive law, and so to the equivalent of bundles of Hohfeldian rights with a normative force independent of legal recognition. To refuse to use the language of rights when discussing the moral foundations of law seems to impose an unduly narrow constraint on the articulation of moral and political discourse.

In the face of these considerations, if there is a good reason for neo-Aristotelian theorists to eschew the language of rights—and thus good reason for historians of philosophy like Miller to eschew projects of "retranslation" of Aristotle's thought into such language—it will be that the translation of Aristotelian thought into rights language distorts that thought in such a way as to obscure or undermine what is distinctive about it. Perhaps the discourse of rights is so confused and disordered that no reform is possible, and what we need is conceptual

[61] Gregory S. Alexander and Eduardo M. Peñalver, *An Introduction to Property Theory* (Cambridge: Cambridge University Press, 2012), pp. 80–101, consider a range of Aristotelian approaches to property rights. More generally, see, from different perspectives, Edward Feser, "The Teleological Foundation of Natural Rights," in *The Cambridge Handbook of Natural Law and Human Rights*, ed. Tom Angier, Iain T. Benson, and Mark D. Retter (Cambridge: Cambridge University Press, 2023), pp. 133–45; and Christopher Tollefsen, "New Natural Law Foundations of Human Rights," in *The Cambridge Handbook of Natural Law and Human Rights*, pp. 146–59.

revolution. That seems to be MacIntyre's view. Why should we resist it?

Most of the problems that trouble critics of rights language stem from the way that appeals to rights seem to function as appeals to fundamental reasons. Rights are often treated as though they were intrinsic properties of individuals that explain why others are obligated to the rights-bearer in specific ways. Especially in popular discourse, rights assertions either come with no further justification or receive justifications that seem to commit the individualist fallacy: the value of the right to the rights-holder is presumed to be sufficient to ground obligations on the part of others. Rights talk thus expresses practical conclusions while appearing to offer reasons in support of those conclusions, but without in fact presenting any such reasons. It is, accordingly, liable to generate disputes and conflicts that cannot be resolved in its own terms. The basic problem with rights discourse is that although rights cannot be practically fundamental but must depend on other principles or goods, rights discourse often obstructs rather than facilitates inquiry and debate about such goods and principles. If we are not to abandon rights talk entirely, we need a way of thinking and speaking that draws attention to the goods and principles that underlie the obligations correlative to rights without forfeiting the respect for individual human beings that rights language forcefully conveys. It is a considerable merit of Miller's retranslation of Aristotle into the language of rights that it helps us to see a way of retaining the language of rights while making clear that rights can never be practically fundamental and avoiding the individualist fallacy.

If the Hohfeldian analysis is roughly correct, then to say that X has a right can never be to give a fundamental reason for holding Y under a duty, because to say that X has a right is already to say that some Y has a duty to X. That is why rights language is well suited to express practical conclusions but poorly suited to provide fundamental reasons. Rights are not intrinsic properties of individuals, but normative relations between persons, where some persons have a right and others have a duty. The burden of justification for any assertion of rights is therefore to show that there is adequate reason for the relevant class of persons to be held under a duty. Otherwise put, reason must be given to show that the relevant others should respect or promote the interest or freedom to which someone supposedly has a right. Merely

asserting that someone has the right in question never gives such reason. Moreover, merely pointing to the value of some interest or freedom for the rights-holder is insufficient to explain why anyone else should be obligated to respect or promote that freedom or interest. Aristotle's conception of human beings as political animals and his moderate individualist account of the common good, however, provide us with such reasons.

In order to flourish as human beings, we need to enter into relationships with others governed by justice, which is to say, governed by norms of mutually beneficial cooperation and benevolence. These relationships are not of merely instrumental value to us; they are partly constitutive of our flourishing. Norms of respect for and promotion of the good of others are internal to these relationships, such that we cannot achieve the good of these relationships without adherence to such norms. Each of us, therefore, has a duty or obligation to enter into such relationships and not to engage with others in ways contrary to them. This duty or obligation is in part a duty to ourselves—something that we ought to do for our own sake—grounded in our own pursuit of our own flourishing.

Yet it is also reasonably regarded as generating duties *to* others and not merely duties that reliably issue in acts that incidentally benefit or respect them. For it is essential to the sorts of relationships in question that we take others' interests as reasons for our own action and that these others have standing to make claims on us, to call us to fulfill our obligation by respecting them. Our own flourishing obligates us to cultivate respectful and benevolent relations with others and to refuse to cultivate exploitative or despotic ones. These relationships partly consist in normative relations accurately described by the elements of Hohfeld's analysis of rights. Yet these rights are not taken as practically fundamental, and the justifications offered for them avoid the individualist fallacy. Moreover, thinking about rights in terms of relationships conducive to human flourishing promises to help us avoid the other problems Biggar highlights: rights, understood as only one aspect of such relationships, will not crowd out duties or become unsustainably absolute or inflexible.

All of this is exceedingly abstract, and there is no question of supposing that Aristotle himself gave an adequate account of what we owe to each other. To take a few of the most obvious examples, he

endorsed slavery for certain classes of people, he thought fundamentally inegalitarian relations between men and women appropriate, and he struggled to free himself of prejudices in his understanding of non-Greek peoples.[62] Neo-Aristotelian theorists today are likely to think that we have stronger and more extensive obligations to all human beings and that respect and promotion of their good requires greater respect for autonomy. There is nothing approaching consensus on these questions among contemporary thinkers inspired by Aristotle. Some endorse a radically libertarian politics, some a radically anti-liberal sort of communitarianism, and others more moderate sorts of liberalism or social democracy.[63]

It has sometimes been suggested that Miller's interpretation of Aristotle uniquely supports libertarian politics, but it should be clear by now that this is not so. Aristotelians can embrace this view of the compatibility of rights and an Aristotelian theory of justice without begging the question in any intra-Aristotelian disagreements. Such disagreements promise, however, to be more tractable than disagreements between rival assertions of fundamental rights, because they are disagreements about the shape of human flourishing and the forms of social life necessary to make flourishing possible for everyone rather than rival intuitions about how people ought to be treated.

Aristotelian modes of thought would thus not eliminate disagreement. They might, however, do less to obstruct productive debate and collective deliberation. If I am right, this would be debate and deliberation about rights, both the legal rights that ought to have institutional recognition and the moral rights that provide part of the

[62] For a sensible treatment of these issues, see Kraut, *Aristotle*, pp. 277–356.

[63] See, e.g., Douglas Rasmussen and Douglas Den Uyl, *Norms of Liberty: A Perfectionist Basis for Non-Perfectionist Politics* (University Park, PA: Pennsylvania State University Press, 2005); Mark C. Murphy, *Natural Law in Jurisprudence and Political Philosophy* (Cambridge: Cambridge University Press, 2006); Kelvin Knight, *Aristotelian Philosophy: Ethics and Politics from Aristotle to MacIntyre* (Cambridge: Polity Press, 2007); Gary Chartier, *Economic Justice and Natural Law* (Cambridge: Cambridge University Press, 2009); Martha Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge: Harvard University Press, 2011).

basis for such legal rights. It would not change the subject by putting deliberation and debate about common goods, obligations, and reasonable distributions of benefits and burdens *in place of* deliberation and debate about rights. It would instead provide a way of carrying on deliberation and debate about who has rights to what precisely *by* focusing attention on the rational considerations that ground the obligations correlative to those rights, obligations rooted in the goods we share as rational animals.

Michael J. Perry puts this conclusion well in *The Idea of Human Rights*:

> [P]roperly understood, rights talk is a derivative and even dispensable feature of modern moral discourse. . . . What really matters—what we should take seriously—is not human rights talk but the claims that such talk is meant to express: the claims about what ought not to be done to or about what ought to be done for human beings. We can take rights seriously (so to speak) without taking rights talk too seriously.[64]

In light of the problems with rights discourse, it would be equally important to observe that an Aristotelian theory of justice *can* be expressed in such language *and* that it can be expressed without it. One of the achievements of *Nature, Justice, and Rights in Aristotle's Politics* is to show that this is so; nothing that Miller's critics have said casts doubt on this conclusion. For that reason, Miller's interpretation of Aristotle in terms of natural rights deserves our continued appreciation.[65]

[64] Perry, *The Idea of Human Rights*, p. 56.

[65] I am grateful to Tom Angier, Carrie-Ann Biondi, Thornton Lockwood, Victor Saenz, and Lea Aurelia Schroeder for feedback on drafts of this article.